

Letter A – USFWS and CDFW Joint Letter

- A-1-1 through A-1-4** The following is in Responses to Comments A-1-1 through A-1-4. The County acknowledges and appreciates these comments. The comment will be included as part of the FEIR and considered by the decision makers. The comments provide a summary with regard to the documents that were reviewed, and the comments provided in the letter, a summary of USFWS and CDFW responsibilities, and a summary of the MSCP and permits issued. The comments do not raise any new issue or make any new substantive comment concerning the adequacy of the DEIR. For that reason, the County provides no further response to this comment.
- A-1-5** The County acknowledges and appreciates this comment. It will be included as part of the FEIR and considered by the decision makers. However, the comment expresses an opinion on the selection of an alternative and does not raise any new issue or make any new substantive comment concerning the adequacy of the DEIR. For that reason, the County provides no further response to this comment.
- A-1-6** This comment focuses on the Otay Ranch RMP and includes suggestions for updating it. The comment, however, does not address the content or analyses set forth in the current DEIR for the proposed Project. Therefore, no further response is required. For more information, please see Global Response 1: Phase I RMP and Phase II RMP, and Response to Comment A-1-5.
- A-1-7** The County acknowledges and appreciates the comment, which expresses the commenter's position as to the effect of the Baldwin Letter. Whether the Baldwin Letter constitutes a legally binding agreement is beyond the scope of CEQA and this environmental analysis. Therefore, no further response is required.
- A-1-8** See Responses to Comments A-1-6 and A-1-7. The maps provided in the EIR accurately reflect the County's MSCP Subarea Plan, which, as noted in Section 2.3.1.5 of the EIR, incorporates the Baldwin Letter. Portions of the Baldwin Letter proposals that have been carried out subsequent to adoption of the MSCP Subarea Plan in 1997 are reflected in the Project documents, as appropriate.
- A-1-9** The County disagrees with the comment that "in the absence of a regional mitigation strategy for Quino checkerspot butterfly (QCB), the potential impacts to the core population of QCB onsite may be greater because the Project will not receive the significant benefit of the regional mitigation strategy." The County also disagrees that "...all of our discussions regarding impacts to Quino from the Village 13 project have been in the context of a regional mitigation strategy..." During meetings with the Wildlife Agencies, various permitting options have been discussed for take of QCB, including (a) permits under Section 7 or Section 10 of the federal Endangered Species Act (ESA) and/or (b) a regional mitigation strategy.

The QCB Management/Enhancement Plan, which is part of the mitigation program for this Project, has been prepared to ensure the survival and management of QCBQCB individuals and habitat at a regional level and a project level. Mitigation Measure M-BI-9b states:

"Quino Management/Enhancement Plan: Prior to the issuance of the first grading permit that impacts QCB, the Project applicants shall prepare a long-term Quino Checkerspot Butterfly Management/Enhancement Plan that shall, at a minimum, include a survey methodology for onsite preserve areas pre- and post- construction to monitor effects on QCB population health. This plan will be submitted to, and be to the satisfaction of, both the Directors of the Departments of Planning & Development Services and of Parks and Recreation. The Quino Checkerspot

Butterfly Management/ Enhancement Plan (“Plan”) shall be superseded or unnecessary upon completion and adoption of the County of San Diego Quino Amendment to the MSCP. Adaptive management techniques shall be developed within the Plan with contingency methods for changed circumstances. These measures shall ensure that the potential loss of individuals and the loss of habitat for the species related to the proposed development are adequately offset by measures that will enhance the existing preserved population, and shall provide data that will help the species recover throughout its range” (see DEIR, Summary, page S-23).

DEIR Section 2.3.3, pages 2.3-34 through 2.3-36, discusses cumulative impacts to QCB. Cumulative impacts were evaluated reviewing past, present, and future projects within the MSCP Subarea Plan South County Segment. Each of the identified projects was determined to reduce impacts to QCB to less than significant on an individual basis through project-specific mitigation. To mitigate the Project’s contribution to cumulative impacts on QCB, the EIR recommended either adoption of the proposed Quino Amendment to the MSCP or project-specific mitigation, as identified in mitigation measure M-BI-9b and as presented in the QCB Management/Enhancement Plan, Biological Resources Technical Report Appendix K. The EIR determined that either mitigation approach would be sufficient to reduce to less than cumulatively considerable the proposed Project’s contribution to any significant cumulative effect on QCB. When the County adopts the Quino Amendment to the MSCP, the measures described above would reduce the Project’s contribution to cumulative impacts to QCB to less than cumulatively considerable.

In addition to meeting its CEQA mitigation obligations, the proposed Project also must address its impacts on QCB for purposes of complying with the federal ESA. Although any permit sought or issued under the ESA is beyond the scope of CEQA and this EIR, the County provides the following information for context. During meetings held between the Wildlife Agencies, County staff, and the applicant on July 16, 2014, various ESA permitting options were discussed. Such options include a regional Quino Amendment to the MSCP, a stand-alone regional Habitat Conservation Plan (HCP), a project-specific HCP, and a project-specific Section 7 Consultation (dependent on the U.S. Army Corps of Engineers). For a project-specific HCP, the focus would be on the recovery of the species. This could not happen in a vacuum, as the species behaves as part of a metapopulation. For a project-specific Section 7 Consultation, the focus on the species is for No Jeopardy. Again, this focus could not occur in a vacuum and would address that the onsite population of the species would demonstrate resilience and that the proposed Project would not result in the extinction of the species. Thus, all alternatives for permitting for the impact and take of the species will be required to address the long-term survival of the species.

A-1-10 The County disagrees with the comment that drought conditions would require the proposed Project to implement specific mitigation measures beyond those that might be recommended in a regional conservation strategy for QCB. The population of QCB on Village 13 has shown resilience to environmental perturbations based on the repeated observations of the butterfly over a number of years during surveys conducted from 1999 to the most recent review in 2016. The observations have continued to show the same general trend as to the locations of the species. Given that the population is resilient, the mitigation should be designed to address both good and poor conditions in order to maintain the population. The 2:1 mitigation requirement is designed to provide for more preserve acreage, while the QCB Management/Enhancement Plan provides for monitoring and focuses on areas for habitat improvement. The County disagrees that the proposed Project’s mitigation goals and objectives regarding QCB would be different than those in any future regional strategy for the species. The County has determined that the mitigation strategy outlined within the DEIR (page S-23, mitigation measure M-BI-9b) provides adequate regional and site-specific mitigation for QCB, pursuant to CEQA. In addition, mitigation measure

M-BI-9b states that “Adaptive management techniques shall be developed within the plan with contingency methods for changed circumstances. These measures shall ensure that the potential loss of individuals and the loss of habitat for the species related to the proposed development are adequately offset by measures that will enhance the existing preserved population, and shall provide data that will help the species recover throughout its range” (See DEIR, Summary, page S-23). The adaptive management strategy will take into account a change in existing conditions such as drought.

The commenter also states that Alternatives C through G would result in fewer impacts to QCB and result in greater conservation of suitable habitat. Alternatives C through G represent projects with a reduced development footprint ranging from 212 acres to 538 acres. The reduction in development area increases open space from 230 to 556 acres, resulting in less impacts to QCB habitat. The additional open space will remain in a natural and undeveloped condition under private ownership. However, each of these alternatives fails to achieve one or more of the Project objectives related to total units, development of predominantly single-family executive style homes, and expected conveyance of open space land to the preserve. In the case of Alternative G, it would not result in development of an elementary school or public safety site. Based upon the environmental analysis of the Project alternatives, Alternative G would be considered the environmentally superior alternative. Please see Section 4.1.1 of the EIR for specific discussion of alternatives selection and analysis. The comment will be included as part of the FEIR and considered by the decision makers.

A-1-11 The commenter recommends discussions with the County regarding the Quino Amendment to the MSCP, expresses concern that the loss of the core population at Village 13 could result in extirpation of local populations within the recovery unit, and questions if the QCB Management/Enhancement Plan suffices in lieu of a regional strategy. The County has had several meetings with Wildlife Agencies to address potential impacts to QCB. The County disagrees that the project-specific enhancement plan is inadequate to protect the species. However, the County, with funding from the applicant, has initiated an amendment to the MSCP to add QCB as a covered species, also known as the Quino Amendment to the MSCP. The amendment will establish a regional strategy for species management. Additional information regarding the QCB Management/Enhancement Plan is provided in Response to Comment A-1-9.

A-1-12 Please refer to Global Response 2: Golden Eagle, which addresses impacts to the golden eagle, including impacts to foraging habitat. The proposed Project conforms to the MSCP and County Subarea plans and meets the conservation standards outlined therein for golden eagles as a Covered Species. Surveys conducted for the MSCP and this Project indicated that golden eagles occasionally use the Project site for forage. This is not new information. With respect to the ongoing USGS study, this information merely confirms what has already been documented in the past. It would not represent or reflect a changed condition.

A-1-13 Please refer to Global Response 2: Golden Eagle, which addresses impacts to the golden eagle, including impacts to foraging habitat. The comment also states that each development alternative should be evaluated relative to golden eagle foraging. Generally, alternatives are assessed to the extent they produce impacts different from those anticipated to occur with the proposed Project. In this case, the DEIR determined that the proposed Project’s impacts on the golden eagle would be consistent with the impacts contemplated under the RMP and MSCP and, as such, are sufficiently mitigated to a less than significant level. The purpose of alternatives is to address those Project impacts that have been determined significant. Given that, in this case, the Project’s impacts on the golden eagle have been mitigated to less than significant, it is not necessary to evaluate each alternative’s specific impacts on that species.

A-1-14 Please refer to Global Response 2: Golden Eagle, which addresses impacts to the golden eagle, including impacts to foraging habitat.

A-1-15 The County acknowledges and appreciates the comment. The comment will be included as part of the FEIR and considered by the decision makers.

A-1-16 The County concurs with this comment. Section S.5 of the SEIR has been revised as recommended by the comment, and now reflects the information provided in Table 4.0-1.

A-1-17 The commenter takes the position that raptor foraging and habitat were not sufficiently conserved in the MSCP and thus the MSCP does not provide adequate mitigation for the proposed Project's impacts to grasslands. The County disagrees with the commenter on this point. The Project would affect 137 acres of grassland while preserving approximately 51 acres of grassland. While this is determined to be a significant impact, it is mitigated by conveyance. The County also assessed Project-related loss of grassland in a cumulative context and determined as follows, as discussed in the DEIR on page 2.3-33:

“Both the Otay Ranch RMP and the MSCP Subarea Plan provide mitigation for cumulative impacts to biological resources. The Otay Ranch RMP and MSCP were specifically designed to ensure that cumulative impacts to biological resources from development in this area, including the proposed Project site, are reduced to a less-than-significant level. The Otay Ranch RMP specifically provides the outline of the CEQA mitigation required by the Otay SRP Program EIR. Although portions of the Project would designate open space in addition to existing planned Preserves, encroachment into both the Otay Ranch RMP and MSCP Subarea Plan Preserves requires a demonstration that the modified Preserve would provide for an equal or higher level of biological value. As analyzed in Section 4.0 of the Otay Ranch Resort Village Biological Resources Technical Report (**Appendix C-3**), the proposed reconfiguration of the Preserve provides for an improved preservation of biological value and Preserve design compared to the original Preserve; therefore, significant cumulative impacts related to losses of habitats and species covered by the MSCP Subarea Plan and Otay Ranch RMP would be reduced to *less than significant*.”

Thus, cumulative impacts to grasslands, as a covered habitat and biological resource, were addressed by the MSCP and are deemed less than significant.

A-1-18 The DEIR, Section 2.3.2.3, page 19 analyzes the impact to QCB habitat according to the conditions on the site. This analysis focuses first on “suitable” habitat, and second on designated critical habitat. Note, however, that the two habitat categories are largely conterminous. Figure 2.3-11 shows the areas of suitable habitat for QCB, including locations where individuals and host were observed as recorded during the 2008 focused survey. Figure 2.3-12 shows the impact to critical habitat for the QCB but provides an incorrect acreage figure. The correct impact figure is 549.6 acres, as explained in the following revised discussion in the Biological Resources Technical Report on the impacts to QCB: “The project would permanently impact 483 acres of potentially occupied habitat for this species (Figures 25 and 26). The total acreage of critical habitat impacted is 549.6 acres within the Otay Unit which is composed of a total of 34,941 acres of which the impact for the proposed project is 1.6%. However, based on the areas within the project site that are concluded to be suitable for the QCB due to presence of suitable habitat or host plant, the proposed Project would result in 483 acres of impacts to QCB habitat.”

The acreage of impact to critical habitat for the species is reported as a matter of information and does not identify any new impacts or mitigation measures. For purposes of determining significance and identifying appropriate mitigation for QCB, the EIR considers Project-related impacts to butterfly locations, host plants, and suitable nectar resources. Impact determinations and mitigation are not based on impacts to critical habitat because, as the commenter points out, critical habitat might not include all of the habitat suitable for the species.

- A-1-19** The commenter correctly states that the DEIR proposes to preserve 2 acres of suitable QCB habitat for every acre impacted (see page 2.3-19). As indicated in the comment, this additional acreage must be conveyed to adequately mitigate impacts to QCB. Mitigation measure M-BI-1a in the FEIR has been revised to reflect this. Page 2.3-19 of the DEIR, and more specifically mitigation measure M-BI-9a on page 2.3-46, states that 966 acres of habitat preservation is required for the 483 acres of impact. The Project proponent will conserve 962 acres of suitable habitat within the Preserve and will restore 4 acres within the Preserve to account for the additional required acreage as shown in Figure 7 of the Quino Checkerspot Butterfly Management Plan. The 2:1 mitigation ratio is already accounted for within the DEIR and is therefore reflected in the FEIR. The County concurs with the comment regarding the incorrect critical habitat acreage identified in the DEIR. Section 2.3.2.3, page 2.3-19 has been revised in the FEIR to reflect the accurate acreage and percentage of impacts.
- A-1-20** This EIR does not consider Project-related impacts to the federally listed San Diego fairy shrimp as covered under the MSCP Subarea Plan. Therefore, the EIR assumes that any take of the species will require a permit under Section 7 or Section 10 of the federal ESA. However vernal pools are addressed and protected under the Otay Ranch RMP. As discussed in DEIR Section 2.3.5.3, the Project's impacts to vernal pools will be mitigated pursuant to mitigation measure M-BI-7.
- A-1-21** The County concurs with this comment. The comment requests that the three figures mentioned be updated to include legends. This change has been made and is reflected in Figures 3.3-4, 3.3-13, and 3.3-14 in the FEIR.
- A-1-22** The County concurs with this comment. The comment requests that the figures mentioned also show lands owned by USFWS acquired for Open Space. This change has been made and is reflected in Figures 3.3.-13, 3.3.-14, 3.3.-15A, 3.3-15B, 3.3-16A, 3.3-16B, and 3.3-17 in the FEIR.
- A-1-23** The County acknowledges this comment. The comment notes that eight appendices used as a reference in the RMP document were not provided on the County's website for public review. These documents were added to the County website in April 2015.
- A-1-24** To allow certain permitted uses, as summarized in Section II.B.3 (e.g., for the construction/implementation of infrastructure, active or passive recreational uses, an interpretive center, etc.), the Preserve Owner Manager (POM) may need to sell, gift, or lease lands, which may involve transfers of fee title, the granting of easements, and/or leases to third parties for such uses.
- A-1-25** As previously stated, the City and County created a comprehensive amendment to the existing RMP; a complete list of entities that own and/or manage land within Otay Ranch are included. See Response to Comment A-1-32 related to the Wildlife Agencies' June 6, 2013, letter. The CFD or other funding mechanism would be in place prior to conveyance.

- A-1-26** The County acknowledges the comment and understands there needs to be a regional approach to the gnatcatcher and cactus wren. However, the comment suggests a meeting with stakeholders to determine the course of action or consistency for regional work efforts, which is not a Project impact. This approach is directed towards the function and use of POM resources for conveyed lands. The Project will convey the appropriate amount of lands per the adopted RMP over to the POM. The POM will have the responsibility for the implementation of a regional approach for the gnatcatcher and cactus wren. The agencies have regular monthly batching meetings with the County to discuss projects and project-related issues. Also, the agencies meet with the POM representatives and/or the Preserve Biologist/Steward to assist with the implementation, restoration, conservation, and activities within the Biota Monitoring Plan framework.
- A-1-27** The mitigation measure referenced in this comment appears to be related to, and a requirement of, the “Newtown Plan” alternative analyzed in the Otay Ranch GDP/SRP Program EIR. It should be noted that the County of San Diego did not adopt the Newtown Plan alternative, but instead adopted the SRP pursuant to the “Mitigated Phase II Progress Plan” alternative. It then adopted findings of fact related to that alternative’s impacts and mitigation measures. Those mitigation measures did not include the mitigation measure referenced in the comment (Mitigation Measure 35). As such, the mitigation measure referenced in the comment is not applicable to the proposed Project. Regardless, as indicated in Section 2.3.5 of the DEIR, the Project will provide conveyance of land within the Otay Ranch, management of the Preserve land as required and determined by the Preserve Owner Manager, biological monitoring to prevent impacts to sensitive species, fencing and signage to preclude entry into the Preserve, and compliance with the MBTA.
- A-1-28** Please refer to Global Response 1: Phase I RMP and Phase II RMP, regarding Phase II RMP. The Phase II RMP Update will include the status of conservation activities and metrics.
- A-1-29** Please refer to Global Response 1: Phase I RMP and Phase II RMP, regarding Phase II RMP.
- A-1-30** Please refer to Response to Comment A-1-26 as well as Global Response 1: Phase I RMP and Phase II RMP, regarding Phase II RMP.
- A-1-31** Please refer to Global Response 1: Phase I RMP and Phase II RMP, regarding Phase II RMP. The Phase II RMP Update will include the status of conservation activities and metrics.
- A-1-32** The comment provides background information on previous Otay land transfer activities but does not address the content or adequacy of the subject EIR. The commenters also comment on the RMP and POM implementation plans and are not related to the impact analysis in the DEIR. Please refer to Global Response 1: Phase I RMP and Phase II RMP, regarding the RMP. Therefore, no further response is required.